

REMARKS

Reconsideration and withdrawal of the rejections made in the instant Office Action are respectfully requested, in view of the foregoing amendments and the following remarks.

Summary of Amendments

By the foregoing amendments claims 16, 17, and 19-23 are canceled, claims 10, 11, 18, and 24-28 are amended and new claims 30-36 are added, whereby claims 10-15, 18, and 24-36 are pending in the present application. Claims 10, 25 and 28 are independent claims. Support for the amended and new claims can be found throughout the present specification and, in particular, on pages 7-9 thereof.

It is noted that the cancellation of claims 16, 17 and 19-23 is without prejudice or disclaimer, and Applicant expressly reserves the right to prosecute these claims in one or more divisional and/or continuation applications.

Summary of Office Action

Claims 10-19 and 25-27 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Antoine, FR 2768162 (hereafter "ANTOINE").

Claims 20-24 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ANTOINE in view of LANGUMIER et al. (U.S. Patent No. 5,256,712).

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Claim 28 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ANTOINE in view of ULRICH et al. (U.S. Patent No. 5,735,634).

Claim 29 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ANTOINE in view of HENDRIKS et al. (U.S. Patent No. 5,910,212).

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested.

Response to Rejection of Claims 10-19 and 25-27 under 35 U.S.C. § 102(b) over

ANTOINE

Claims 10-19 and 25-27 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by ANTOINE. The rejection asserts that ANTOINE at page 5, lines 10-34, discloses a bituminous draining road blanket comprising a plurality of layers wherein a first upper layer can have a thickness of 1.5 cm and further comprises a bituminous binder, modified by an elastomer; aggregate diameter in the range of 0/6-4/6 mm; a plurality of filler materials having a total weight% in the range from 7-10%. The rejection further asserts that the second layer allegedly can have a thickness in the range of 4-6 mm and further comprises a bituminous binder and aggregate having a diameter in the range of 10/14 mm, such that the first aggregate size distribution is from about 2.5:1-4:1.

With regard to claims 13 and 15, the Office Action alleges that ANTOINE discloses the particle size distribution of the first layer is at least 94% of the 4/6 mm range and the second layer allegedly has a distribution of at least 94% of the 10/14 mm range.

As regards claims 16-19, the rejection asserts that ANTOINE discloses that the void ratio of the upper and lower layers are in the range of 20-30%, and that the upper layer preferably has a smaller void ratio than the lower layer.

Applicant respectfully submits that ANTOINE was published on March 12, 1999, i.e., less than one year before the effective filing date of the present application, which is February 15, 2000 (filing date of International Application PCT/FR00/00374, of which the present application is a National Stage). Accordingly, ANTOINE does not qualify as prior art under 35 U.S.C. § 102(b) .

Moreover, submitted herewith is a verified English translation of the priority document of the present application, i.e., French Application No. 99/01789 filed February 15, 1999. Since the filing date of this priority document precedes the publication date of ANTOINE (March 12, 1999), and all of the claims submitted herewith should be considered to be supported by the priority document, ANTOINE does not qualify as prior art under 35 U.S.C. § 102(a), either.

In view of the foregoing, withdrawal of the rejection of claims 10-15, 18, and 25-27 under 35 U.S.C. § 102(b) over ANTOINE is respectfully requested.

Response to Rejection of Claims 20-24 under 35 U.S.C. § 103(a) over ANTOINE in view of LANGUMIER et al.

Claims 20-24 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ANTOINE in view of LANGUMIER et al. The rejection acknowledges that ANTOINE fails to disclose the specific components of the elastomer for modifying the bituminous binder, but alleges that LANGUMIER et al. discloses a road quality bitumen comprising a bituminous binder, at least 3 % elastomer (such as SBS) and at least 30 % bitumen containing less than 6 % of saturated products and less than 7 % of asphaltenes. The Examiner takes the position that, therefore, it would have been obvious to provide the roadway of ANTOINE with a bituminous composition as allegedly taught in col. 2, line 45, to col. 3, line 60 of LANGUMIER et al. in order to maximize the storage ability of the elastomeric bitumen composition.

Applicant notes that the rejection of claims 20-24 under 35 U.S.C. § 103(a) is based on a combination of the teachings of ANTOINE and LANGUMIER et al. As set forth above with regard to the rejection of claims 10-19 and 25-27, ANTOINE does not qualify as prior art under 35 U.S.C. § 102(a) and (b), wherefore a rejection based on a combination of ANTOINE with any other document necessarily is without merit. In view thereof, withdrawal of the rejection of claims 20-24 under 35 U.S.C. § 103(a) is warranted and respectfully requested.

Response to Rejection of Claim 28 under 35 U.S.C. § 103(a) over ANTOINE in view of ULRICH

Claim 28 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ANTOINE in view of ULRICH et al. In this regard, the Examiner takes the position that ANTOINE discloses a process for providing a road surface with a draining bituminous blanket comprising at least two layers, a first layer allegedly comprising a modified bituminous binder, aggregate having a first particle size and 7-10 % by weight of a filler material, and a second layer comprising a bituminous binder and an aggregate of a particle size distribution larger than the first layer. The rejection acknowledges that ANTOINE fails to disclose how the roadway is formed, but alleges that ULRICH et al. discloses a road finisher comprising a plurality of premix hoppers for receiving different types of asphaltic concrete to a roadway to be paved, a plurality of conveyors for separately providing different types of asphaltic concrete to a roadway to be paved, such that one type of asphaltic concrete forms a first layer and the other type of said asphaltic concretes forms a second layer on top of the first layer. In the Examiner's opinion it would, therefore, have been obvious to provide the process of making a water permeable roadway of ANTOINE with a road finisher capable of spreading two layers of paving material onto a roadway, as allegedly taught by ULRICH et al., in order to pave a multi-layer roadway in one pass.

As already pointed out above, ANTOINE does not qualify as prior art under 35 U.S.C. § 102 (a) and (b), wherefore a rejection based on a combination of ANTOINE with ULRICH

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et al. is without merit. For at least this reason the rejection of claim 28 under 35 U.S.C. § 103(a) is unwarranted and should be withdrawn, which action is respectfully requested.

Response to Rejection of Claim 29 under 35 U.S.C. § 103(a) over ANTOINE in view of HENDRIKS et al.

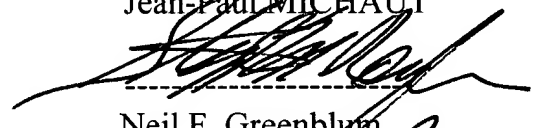
Claim 29 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ANTOINE, as applied to claim 28, and further in view of HENDRIKS et al. The Examiner acknowledges that ANTOINE fails to disclose the temperature at which the paving materials are applied to the roadway, but alleges that HENDRIKS et al. teaches an open graded asphalt that is applied to a roadway at a temperature of less than 140 degrees Celsius. In the Examiner's opinion it would, therefore, have been obvious to form the roadway of ANTOINE in view of ULRICH et al. at a temperature of less than 140 degrees Celsius, as allegedly taught by HENDRIKS et al., in order to reduce toxic emissions and the cost of maintaining the paving material temperature.

Applicant notes that claim 29 is dependent from claim 28, and that it has been set forth above why the rejection of claim 28 over ANTOINE in view of ULRICH et al. is without merit. The rejection of claim 29 over a combination of the same documents used in the rejection of claim 28 and an additional document is necessarily unfounded as well. Accordingly, it is respectfully requested that the rejection of claim 29 under 35 U.S.C. § 103(a) be withdrawn as well.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Jean-Paul MICHAUT


Neil F. Greenblum
Reg. No. 28,394 *Ray Ho*
3/12/03

October 6, 2003
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Enclosure: Verified English translation of French Application No. 99/01789